U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIVIEN GREY and U.S. POSTAL SERVICE,
POST OFFICE, St. Petersburg, Fla.

Docket No. 96-1765; Submitted on the Record;
Issued June 19, 1998

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that she sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.

On December 12, 1995 appellant filed a claim alleging that on that date she sustained an emotional reaction to an investigative interview by her supervisor. The employing establishment confirmed that an investigative interview was conducted on December 12, 1995 and the supervisor submitted a memorandum regarding the interview. According to the memorandum, appellant was observed on December 7, 1995 by another supervisor, while on her mail route. The memorandum provided specific questions to appellant regarding her actions on December 7, 1995 and with regard to mail found in her "hold" tray. In a January 12, 1996 letter, a supervisor indicated that the employing establishment was still in the process of determining the nature of the disciplinary action that would be taken against appellant.

By decision dated February 15, 1996, the Office denied the claim on the grounds that the evidence failed to establish an injury in the performance of duty. In a letter dated and postmarked March 21, 1996, appellant requested reconsideration of her claim. In a decision dated April 10, 1996, the Office's Branch of Hearings and Review denied the request for a hearing on the grounds that it was untimely and the issue could equally well be addressed by requesting reconsideration and submitting new and relevant evidence.

The Board has reviewed the record and finds that appellant has not established an emotional condition in the performance of duty.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or

adversely affected by factors of her federal employment.[1] To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[2]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[3]

The initial question presented is whether appellant has established a compensable factor of employment as contributing to an emotional condition. In this case appellant alleged an emotional reaction from an investigative interview by her supervisor on December 12, 1995. It is well established that investigations are generally considered administrative functions of the employing establishment, rather than regular or specially assigned duties of the employee.[4] Unless the evidence discloses error or abuse by the employing establishment, the administrative matter will not be considered a compensable factor of employment.[5]

The record contains a memorandum regarding specific questions and responses from appellant at the investigative interview. There is no evidence of error or abuse in the December 12, 1995 memorandum, nor is there any evidence of record, which discloses error or abuse by the employing establishment in regard to the investigation. Accordingly, the Board finds that appellant has not established a compensable factor of employment in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.[6]

---

[1] *Pamela R. Rice*, 38 ECAB 838 (1987).

[2] *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

[3] *Lillian Cutler*, 28 ECAB 125 (1976).

[4] *Ruth S. Johnson*, 46 ECAB 237 (1994); *Sandra F. Powell*, 45 ECAB 877 (1994).

[5] *See Jimmy B. Copeland*, 43 ECAB 339 (1991).

[6] *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

The Board further finds that the Office's Branch of Hearings and Review properly denied appellant's request for a hearing.

Section 8124(b)(1) of the Act provides in pertinent part:

> "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this title is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[7]

A claimant requesting a hearing after the 30 day period is not entitled to a hearing as a matter of right.[8] In this case, appellant requested a hearing by letter dated and postmarked March 21, 1996. Appellant's representative stated in the letter that no copy of the decision was provided to appellant until February 29, 1996, but the record indicates that the February 15, 1996 decision was properly addressed to appellant's address of record.[9] Since the March 21, 1996 request for a hearing was more than 30 days after the February 15, 1996 decision, appellant is not entitled to a hearing as a matter of right.

Although appellant's request for a hearing was untimely, the Office has discretionary authority with respect to granting a hearing and the Office must exercise such discretion.[10] In the January 31, 1994 decision, the Office advised appellant that it had considered the matter in relation to the issue involved and the hearing was denied on the grounds that appellant could resolve the issue by requesting reconsideration and submitting relevant evidence. This is considered a proper exercise of the Office's discretionary authority.[11] There is no evidence of an abuse of discretion in this case.

[7] 5 U.S.C. § 8124(b)(1).

[8] *See Robert Lombardo*, 40 ECAB 1038 (1989).

[9] It is presumed that notice mailed to an individual in the ordinary course of business was received by that individual; *see Newton D. Lashmett*, 45 ECAB 181 (1993). The Board also notes that the February 15, 1996 decision was not sent to appellant's representative as authorization for representation was not submitted until February 29, 1996.

[10] *See Herbert C. Holley*, 33 ECAB 140 (1981).

[11] *Mary B. Moss*, 40 ECAB 640, 647 (1989).

The decisions of the Office of Workers' Compensation Programs dated April 10 and February 15, 1996 are affirmed.

Dated, Washington, D.C.
June 19, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member